

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1113V

Filed: March 20, 2019

UNPUBLISHED

LINDA KOLACNY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Lawrence Gene Michel, Kennedy, Berkley, et al., Salina, KS, for petitioner.
Camille Collett, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On August 18, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) following an influenza (“flu”) vaccine administered on September 26, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 24, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On March 19, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$110,244.79

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

consisting of \$90,000.00 for past and future pain and suffering, and \$20,244.79 in lost wages. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$110,244.79 consisting of \$90,000.00 for past and future pain and suffering, and \$20,244.79 in lost wages in the form of a check payable to petitioner, Linda Kolacny.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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SECRETARY OF HEALTH AND
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No. 17-1113V

Chief Special Master Nora Beth Dorsey
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On July 9, 2018, respondent filed his Rule 4(c) Report, in which he conceded entitlement. On July 24, 2018, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation for her Shoulder Injury Related to Vaccine Administration ("SIRVA"). Respondent now proffers that petitioner receive an award of a lump sum of \$110,244.79 in the form of a check payable to petitioner. The award is comprised of the following: \$90,000.00 for past and future pain and suffering, and \$20,244.79 in lost wages. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.¹ Petitioner agrees. This proffer does not address final attorneys' fees and litigation costs. Petitioner is additionally entitled to reasonable attorneys' fees and litigation costs, to be determined at a later date upon petitioner submitting substantiating documentation.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

Respectfully submitted,

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s/Camille M. Collett
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Dated: March 19, 2019